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June 30, 2015

Robert deV. Frierson  
Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue NW  
Washington, DC 20551

RE: Enhancements to Federal Reserve Same Day ACH Service – Docket No. OP-1515

Dear Mr. Frierson:

This comment letter represents the views of the Credit Union National Association (CUNA) regarding the enhancements that the Board of Governors of the Federal Reserve (Federal Reserve) are considering to their current Same Day automated clearing house (ACH) service. CUNA represents America's credit unions and their more than 100 million members.

### **Background**

In May, NACHA – The Electronic Payments Association announced that its voting membership approved Same Day ACH, an amendment to the Operating Rules requiring Same Day processing of virtually any ACH payment (for credits and debits). Currently, most ACH payments are settled on the next business day and current ACH schedules and capabilities would continue to apply to transactions that are not designated as Same Day ACH. Under the new NACHA rules, all Receiving Depository Financial Institutions (RDFIs) would be required to receive Same Day ACH payments in order to provide certainty to Originators desiring Same Day processing and settlement. Additionally, the rule establishes the methodology for a Same Day Entry fee as a mechanism for RDFIs to recover some of their costs for enabling and supporting mandatory receipt of Same Day ACH transactions.

This proposal will change the current optional FedACH SameDay Service to conform with NACHA's new rule for Same Day ACH. This includes requiring mandatory participation by RDFIs and an interbank fee paid by the Originating Depository Financial Institution (ODFI) to the RDFI for each Same Day ACH forward transaction. The effective dates of the three implementation phases for the NACHA rule are contingent on receiving written confirmation from the Federal Reserve to support the rule.<sup>1</sup>

CUNA supports the goal of a faster payments system with ubiquitous capabilities. Furthermore, we understand and appreciate the public benefits provided by faster payments and faster availability of funds. We also appreciate NACHA and the Federal Reserve's goals of modernizing and improving the payments system. Nevertheless, we continue to have some

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<sup>1</sup> The Electronic Payments Association, "Same Day ACH: Moving Payments Faster," *available at* <https://www.nacha.org/rules/same-day-ach-moving-payments-faster> (last visited June 23, 2015).

concerns with the requirement that all receiving financial institutions must have the ability to receive and post Same Day ACH payments. Implementation and other ongoing costs to credit unions may be burdensome, specifically for smaller credit unions with low Same Day ACH transaction volume.

Notwithstanding these concerns, and our concerns voiced in our comments to NACHA, we believe that if implemented, Same Day ACH must account for costs imposed on RDFIs. In response to the Federal Reserve's question about the utility of interbank fees, we believe that the proposed interbank fees are necessary for RDFIs to make a dent in offsetting the initial implementation costs and ongoing operating costs. Additionally, we urge both the Federal Reserve and NACHA to continue to evaluate alternatives that could reduce costs associated with Same Day ACH for small financial institutions.

### **CUNA Supports an Interbank Fee to Offset Costs for RDFIs**

CUNA strongly supports requiring an interbank fee to provide some relief for additional costs that will be imposed on RDFIs. Credit unions and other smaller financial institutions are typically net receivers of ACH and would be able to use these fees to help offset some implementation and other costs of enabling Same Day ACH. As noted by the Federal Reserve, ODFIs have the choice of offering a Same Day ACH service to originating customers and may be able to offset their investment through additional service offerings and higher fees for Same Day processing. However, RDFIs would not be able to refuse receipt of Same Day ACH transactions under a mandatory participation requirement and may incur Same Day settlement costs that they are unable to fully offset through incremental revenue. As a result, RDFIs may lack an effective method of offsetting the investment and ongoing costs of Same Day ACH settlement. Not allowing an interbank fee would create an imbalance between ODFIs and RDFIs.

The NACHA rule includes an interbank fee to allow RDFIs to offset costs associated with the up-front investments and ongoing operating costs necessary for accepting, posting, and making funds available from Same Day transactions. The initial interbank fee under NACHA's amended operating rules is 5.2 cents per forward transaction, with the possibility of reduction if actual Same Day transaction volume exceeds original projections by more than 25 percent during regularly required review periods.

CUNA believes that without a balanced interbank fee or another mechanism to help RDFIs with some of the costs they will incur, it would be very difficult for smaller institutions to justify the expenses related to Same Day ACH. For example, in their original proposal NACHA proposed a fee of 8.2 cents per Same Day transaction. When charging 8.2 cents per transaction, 3 cents more than the 5.2 cents adopted in the final rule, NACHA estimated it would take RDFIs an average of 11.5 years to recover associated costs. This likely means it will take several additional years for RDFIs to recover costs given the lower fee adopted in the final rule. In addition, NACHA has stated that the fee will "never" exceed 5.2 cents; however, based on a review NACHA will conduct once the rule has been in effect for ten years, NACHA will assess whether the fee should be reduced based on costs and volume.

Even with the proposed NACHA interbank fee, credit unions serving as RDFIs will face cost burdens for Same Day ACH. We are concerned that many smaller credit unions and credit unions that receive only a small number of Same Day ACH transactions may not be able to recover their costs, or their cost recovery period will be protracted. In addition, if other faster payment methods, such as real-time payments are implemented, that could change the projected volume for Same Day ACH (e.g., decrease Same Day ACH volume), and increase the length of the cost recovery period.

At a minimum, we believe the NACHA interbank fee is necessary, and we urge the Federal Reserve and NACHA to evaluate further whether a higher interbank fee such as the one originally considered by NACHA is appropriate. This is particularly acute for credit unions that will incur higher implementation and ongoing costs relative to the small number of Same Day ACH payments they will ultimately receive.

### **Conclusion**

As discussed above, CUNA supports the objective to provide a faster payments option on the ACH network, and we understand that there are costs and risk management issues associated with any evolution. Nevertheless, we do have concerns about the cost and impact the proposal could have on credit unions and we appreciate your consideration of these concerns. We ask that the Federal Reserve and NACHA continue to evaluate and be mindful of the costs that credit unions, as well as corporate credit unions and other processors, will incur to implement, operate, and comply with these proposed changes.

Thank you for the opportunity to comment on this proposal. If you have any questions concerning our letter, please feel free to contact me directly or Luke Martone, Senior Director of Advocacy and Counsel at (202) 508-6743.

Sincerely,

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